

**Ruby Safe Company Vs. Collector of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Feb-14-1983

**Reported in :** (1983)LC437DTri(Mum.)bai

**Judge :** H Chander, D T K.S.

**Appellant :** Ruby Safe Company

**Respondent :** Collector of Customs

**Judgement :**

1. This is a second appeal under Section 129-A to the Tribunal against the order No. S/49-498, 499, 500, 501, 503 and 504/Dbk. dated 22.5.1982 of the Collector of Customs (Appeals) Bombay. The appeal came up for personal hearing before us on 7.2.83. Nobody turned up to represent the appellants even though in their letter No. RSC/DBK/352/82 dated 6.1.83 they have stated that the date of hearing was convenient to them and they would be present. There was, thus, no oral representation on behalf of the appellants. However, we decided to proceed with the hearing and disposal of the appeal. The Departmental Representative pointed out the fact that the appellant's first appeals to the Appellate Collector of Customs were time-barred under Section 128 of the Customs Act as in existence at the relevant time. He therefore, pressed for the rejection of the present appeal also on the grounds of time-bar.

2. We have considered the submissions. The appellants have not disputed that their appeals to the Appellate Collector of Customs were time-barred. But they

have explained, by way of extenuation that the Ministry of Finance did not fix the drawback rates in respect of products manufactured by them and exported abroad and therefore they could not file the appeals in time. They have prayed for the setting aside of the Appellate Collector's order and allowing their appeals with consequential relief. We find that the prayer is not tenable. We have the powers to condone unlimited delay in presentation of the appeal to us under Section 129-A of the Custom Act. But exercising any powers in condoning the delay in the appeal filed before the Collector (Appeals) under Section 128 *ibid* beyond the further discretionary period of three months, viz. six months from the date of the communication of the order is not justified, as such an action would negate the very basis of time limit fixed under the Customs Act either at the appellate stage under Section 128 C.A. or under other Sections like 27, 28, 110 etc. In this view, we find that the claim for drawback of duty preferred by the appellants is hit under the time bar applicable under Section 128 of the Customs Act. Since we do not have powers to relax this time limit, the appeal of the appellant has also to be rejected for the same reason and we order accordingly.

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